

EXHIBIT N

JONES DAY

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March 30, 2009

VIA EMAIL

M. Justin Draycott, Esq.
Patrick Henry Building
601 D Street, N.W.
Washington, D.C. 20004

Re: *United States ex rel. Ven-A-Care of the Florida Keys v. Abbott Laboratories, Inc.*

Dear Justin:

I write to address a number of discovery topics.

OGC Opinions

I refer to your March 13, 2009 letter in which you described a search for certain OGC opinions pertaining to CMS's ability to "require carriers to use the DOJ data because it is characterized by DOJ as more accurately reflecting average wholesale prices," as referenced in the recently produced June 2000 memorandum from Michael Hash to Kevin Thurm (HHD809-0008 *et seq.*). You have advised us that any such opinions likely were "conveyed orally by OGC staff" to HCFA decision-makers. Given this newfound evidence, Abbott wishes to take limited additional discovery. This could include testimony and documents from Mr. Hash and the other individuals the United States has identified as receiving these opinions, as well as from the individuals who analyzed the potential impact described in the recently disclosed memorandum. *See id.* Please identify the witnesses who have relevant knowledge and advise whether the United States will agree to reopening document and deposition discovery for this limited purpose. I am available to discuss with you the most efficient manner of obtaining the pertinent information.

In addition, please advise us whether the United States will supplement its responses to the written discovery propounded by Abbott, to the extent that this newly discovered evidence bears upon those requests. *See, e.g.,* Interrogatories 14, 15.

30(b)(6) Witnesses

Pursuant to the Court's rulings at the December 4, 2008 hearing pertaining to the United States' Motion for a Protective Order Regarding Abbott's Rule 30(b)(6) Notices, please provide the names of the witnesses, and corresponding topics, that the United States is designating. As

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the OGC opinions, surrounding discussions, impact analysis, and decisions are encompassed within several of the topics for which the United States must produce a witness (*see, e.g.*, Topics 2, 7-9 of November 21, 2007 Letter from Cook to Gobena), please identify which witness(es) will testify as to this information. Finally, please provide suggested dates for each 30(b)(6) witness that the Government is designating.

The Government's Late Production of Documents from the Files of Paul Chesser

At his deposition, Mr. Chesser testified regarding the existence of a number of types of electronic data, documents, and files pertaining to the 1994 OAS audit. He stated that he still had in his possession spreadsheets that compared invoice prices to the published average wholesale prices for many, if not all, of the drugs involved in this litigation. *See* Chesser Dep. at 598-604. As you will recall, I immediately requested the United States conduct a search and produce this information. *Id.* at 600-01. On February 23, 2009 the Government produced some of the electronic data associated with this audit.

Having compared the recently produced data to Mr. Chesser's testimony, it appears that this latest production remains incomplete, as the spreadsheets produced do not appear to contain all of the information that Mr. Chesser described in his deposition. Accordingly, we request that the United States undertake a further review for all electronic data, databases, documents, and analyses that relate to the 1994 OAS audit, as well as all other OIG, OEI, and OAS studies that analyzed Medicare Part B or Medicaid's payment for prescription drugs or dispensing fees, Provider's acquisition cost for drugs, drug pricing, and/or the difference between a Provider's acquisition cost for drugs and then published AWP's, WAC's, Direct Prices, or List Prices. Please advise Abbott whether additional material responsive to our discovery requests exists and provide a date by which additional productions will be made.

Once we are certain that the production of files and data relating to the 1994 OAS audit is complete, we can discuss the extent to which it is necessary to re-open Mr. Chesser's deposition.

Sincerely,

/s/ R. Christopher Cook

R. Christopher Cook

cc: Counsel for Dey
Counsel for Roxane
Counsel for Ven-A-Care